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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
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11 MICHAEL ZELANY,  
12 Plaintiff,  
13 vs.  
14 GAVIN NEWSOM, *et al.*,  
15 Defendants.  
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Case No. CV 17-7357 RS

Assigned to:  
The Honorable Richard G. Seeborg

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION TO ADVANCE HEARING DATE  
AND SHORTEN TIME FOR HEARING  
ON MOTION TO CONTINUE TRIAL AND  
PRETRIAL DATES [Local Rule 6-3]**

Action Filed: December 28, 2017  
Trial Date: November 18, 2019  
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**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT Plaintiff Michael Zeleny (“Zeleny”) will and hereby does move for an order pursuant to Local Rule 6-3 for an order advancing the hearing and shortening time to hear his concurrently-filed Motion to Continue Trial and Pretrial Dates (the “Motion to Continue”). Zeleny requests that the Court hear the Motion to Continue on July 8, 2019 and require that any oppositions be filed by July 5, 2019.

Zeleny makes this motion pursuant to Local Rule 6-3. *See Creative Science Systems, Inc. v. Forex Markets, LLC*, 2006 WL 3826703, at \*1 (N.D. Cal. Dec. 27, 2016) (holding that a motion under Local Rule 6-3 is appropriate, rather than an *ex parte*, where a party seeks only to shorten time). This motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the accompanying Motion to Continue, the Declaration of Damion Robinson, the records and files herein, and such other matters as the Court may consider.

Counsel for defendants Xavier Becerra (“Becerra”) and New Enterprise Associates, Inc. (“NEA”) agree to the relief requested in the Motion to Continue and to shortening time. Counsel for defendants the City of Menlo Park and Dave Bertini (collectively, the “City”) is on vacation through July 8 and unavailable.

**I. INTRODUCTION**

The parties are unable to complete discovery on the current schedule, which imposes a discovery cutoff of July 19, because the pleadings remain unsettled as to defendant New Enterprise Associates, Inc. (“NEA”). NEA has a motion to dismiss under submission, and Zeleny has requested leave to amend if that motion is granted. NEA’s participation in this case will dictate both the scope and schedule of remaining discovery. Robinson Decl. ¶ 1.

The parties will be substantially prejudiced if they do not have the Court’s guidance quickly on the remaining schedule. The discovery cutoff is currently set for July 19. Initial expert disclosures are due August 1. All of the remaining pre-trial dates, including dispositive motions and expert discovery, are set based on the anticipated close of discovery. *Id.* ¶¶ 3-4.

Without an order shortening time, the Motion to Continue cannot be heard until August 8,

2019. This is after the close of discovery and the current expert disclosure deadline. The lack of clarity as to discovery is substantially prejudicial. *Id.* ¶¶ 3-4.

Zeleny, Becerra, and NEA have agreed to the proposed continuance due to the fact that they cannot complete discovery until NEA's status is resolved. The outstanding discovery will have a domino effect on the other pretrial dates because it will dictate expert opinions and the points for dispositive motions. The parties will be significantly prejudiced if they rush to complete discovery and expert disclosures, only to have to repeat that discovery once NEA's status is resolved. *Id.* ¶¶ 6-7. Moreover, until the pleadings are settled, it is not feasible to conduct dispositive motion practice.

## **II. EFFORTS TO RESOLVE INFORMALLY**

Zeleny has attempted to resolve the issues in the underlying Motion to Continue and to stipulate to shorten time. Counsel for all parties other than the City are in agreement (a) that a continuance is needed and to the proposed schedule, and (b) that shortened time is appropriate to address the issue with the Court as soon as possible. Robinson Decl. ¶ 5 & Ex. 1.

Zeleny's counsel has been unable to reach counsel for the City. The City's counsel is unavailable through July 8. Zeleny's counsel has attempted to contact his assistant to see if anyone else at his firm can address the issues. As yet, counsel has not received a response or return call. *Id.* ¶¶ 6-7.

## **III. GOOD CAUSE FOR SHORTENING TIME**

Good cause exists to shorten time so that the Motion to Continue can be heard in advance of the current discovery cutoff. The parties have been pursuing this case diligently, but the status of the pleadings remains uncertain. The parties are also in agreement it would be imprudent to attempt to complete discovery and expert disclosures until the case is at issue.

There have been no previous continuances of trial. Given that NEA's status remains uncertain at this time, counsel have agreed that a further continuance is needed.

This situation arose only recently. NEA's motion to dismiss was heard on June 13 and remains under submission at this time. All parties agree that they cannot complete discovery until it

1 is clear whether NEA is going to remain in this case.

2 While the parties have been able to work cooperatively with the City in scheduling, due to  
3 counsel's vacation, they have been unable to reach a global stipulation. Due to the impending  
4 discovery cutoff and initial expert disclosure deadline, it is not possible to seek the Court's guidance  
5 through a noticed motion. The parties will be prejudiced if they do not receive the Court's guidance  
6 as soon as possible.

7 Dated: June 28, 2019

Respectfully submitted,

8 s/ Damion Robinson

9 David W. Affeld

Damion D. D. Robinson

Affeld Grivakes LLP

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11 Attorneys for plaintiff Michael Zeleny  
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**PROOF OF SERVICE**

I hereby certify that on June 28, 2019, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.

s/ Damion Robinson  
Damion Robinson